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Settlement Class

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**CARRIE COUSER, Individually  
and on Behalf of All Others  
Similarly Situated,**

**PLAINTIFF,**

**V.**

**COMENITY BANK,**

**DEFENDANT.**

**Case No.: 12-cv-02484-MMA-BGS**

**DECLARATION OF PATRICK M.  
PASSARELLA IN SUPPORT OF  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

**Date:** April 20, 2015

**Time:** 2:30 p.m.

**Place:** 3A

**Judge:** Hon. Michael M. Anello

1 I, Patrick M. Passarella, declare:

- 2 1. I am the Senior Vice President of Operations at Kurtzman Carson  
3 Consultants LLC ("KCC"), located at 75 Rowland Way, Suite 250, Novato,  
4 California. I am over 21 years of age and am not a party to this action. I have  
5 personal knowledge of the facts set forth herein and, if called as a witness,  
6 could and would testify competently thereto.
- 7 2. I have over 20 years of experience in class action settlement administration.  
8 Over the course of my career, I have managed more than 500 class action  
9 settlements and I am an expert in claims processing and class member  
10 communications.
- 11 3. KCC is a settlement administrator that specializes in providing  
12 comprehensive class action settlement services including, but not limited to,  
13 pre- settlement consulting, legal notification, email campaigns, contact  
14 center services, website design, claims administration, check and voucher  
15 disbursements, tax reporting, settlement fund escrow and reporting, class  
16 member data management, legal notification, call center support, claims  
17 administration, and other related services critical to the effective  
18 administration of class action settlements. KCC has developed efficient,  
19 secure and cost-effective methods to handle properly the voluminous data  
20 and mailings associated with the noticing, claims processing and  
21 disbursement requirements of settlements to ensure the orderly and fair  
22 treatment of class members and all parties in interest. *See* Exhibit A to  
23 Declaration of Patrick M. Passarella, Dkt. No. 52-10.
- 24 4. KCC's business is national in scope. Since 2000, KCC (along with  
25 Rosenthal & Company which was acquired by KCC in 2010) has been  
26 retained to administer more than 1,500 settlements. As part of these  
27 settlements, KCC has provided noticing solutions in cases with class  
28 members that range in numbers from 22 to over 22 million, and has

distributed settlement payments totaling well over \$2 billion in the aggregate.

5. On October 2, 2014, the Court appointed KCC as the Claims Administrator in the above referenced Action. In this capacity, KCC was charged with (a) performing a phone number reverse look-up to obtain Class Member information; (b) printing and mailing the double-postcard Legal Notice of Class Action Settlement; (c) publishing the Notice of Proposed Class Action Settlement in USA Today; (d) creating a Case website for Class Members to submit a Claim and obtain more information about the Case, including a full notice in a question and answer format (*see Exhibit C*, attached hereto); (e) providing automated phone support to Class Members via toll-free telephone number; (f) receiving and processing completed Claim Forms and Requests for Exclusion; (f) providing Class Counsel and Defense Counsel with status updates; (g) calculating the final settlement awards; (h) processing and mailing settlement checks; (i) handling the distribution of any uncashed settlement award checks; (j) mailing out the Class Action Fairness Act of 2005 (“CAFA”) notice; and (k) performing other tasks as the Parties mutually agree to and/or the Court orders KCC to perform.
6. On September 15, 2014, KCC mailed the Class Action Fairness Act of 2005 (“CAFA”) notice of this settlement to the Attorneys General of all states, including the U.S. Attorney General.
7. KCC received from Defendant a list of approximately 4.4 million potential Class Members to identify mailable names and addresses. Based on this data a final mailing list, containing 3,982,645 names and addresses, was compiled for the purpose of mailing the postcard-type notice. These postcard-type notices informed Class Members of the Settlement Website address, where a claim form could be downloaded or a claim could be made, and also of the Claims Administrator’s toll-free telephone, where Class

Members could obtain further information about the Settlement and also make a claim. Among other things, the website also contains the Complaint, Settlement Agreement, the Preliminary Approval Order, the Motion for Attorney's Fees, Costs and Incentive Payment, the toll free number and a downloadable claim form.

8. As part of the preparation for mailing, all 3,982,645 names and addresses were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of the Class Members before mailing the Notice postcard. To the extent an updated address for an individual identified as a Class Member was found in the NCOA database, the updated address was used for the mailing of the Notice Packet.

9. On October 30, 2014 KCC caused to be published in USA Today, the Summary Notice, in order to provide additional notice to Class Members. A copy of the Summary Notice is Attached hereto as **Exhibit A**.

10. On October 31, 2014, in compliance with the Court's October 02, 2014, Order Granting Preliminary Approval of the Class Action Settlement, KCC mailed the notices to 3,982,645 Class Members in the form of a postcard-type notice approved by the Court. Attached hereto as **Exhibit B**. That equates to 90.5% of the estimated 4.4 potential Class Members.

11. As of March 11, 2015, 199,703 postcards were returned to our office as undeliverable. Of the 199,703 postcards that were returned to us as undeliverable, 125,489 postcards were re-mailed. Additionally, 7,657 postcards were returned with a forwarding address provided by the Post Office. Of those 7,657 postcards returned with a forwarding address, 7,378 were promptly re-mailed to the forwarding address provided. After accounting for all re-mailed and undeliverable notices, all but approximately

1 1.7% of the Class Members for whom direct mail notice was attempted (i.e.,  
2 69,662 out of 3,982,645 Class Members mailed direct notice) did not  
3 successfully receive the direct mail notice of the Settlement.

4 12.KCC has received 331,144 claims, which includes 298,947 timely and valid  
5 claims and 8,967 late claims that the Parties agreed to accept. This equates to  
6 a participation rate of 7.7% from the 3,982,645 Class Members that were  
7 sent the Direct Mail Notice. As a breakdown of the method of claims  
8 submission, 275,488 claims were received by mail, 7,891 by toll-free  
9 number, and 47,765 via the Settlement Website. Of the claims currently  
10 considered valid, 64,622 were submitted with claim numbers tied to the  
11 original Class Member List but without a valid phone number on their claim  
12 form; these claims, with a valid Claim ID, have been treated as valid upon  
13 instruction from counsel (for both Plaintiffs and Defendant).

14 13.All Class Members were provided no less than 90 days to make a claim for a  
15 settlement payout. The Deadline to file a claim was January 29, 2015.

16 14.As of the date of this declaration, KCC is aware of five Objections and 167  
17 Requests for Exclusion, 4 of which are late that the Parties agreed to accept.  
18 The names of the individuals requesting exclusion are attached hereto as  
19 **Exhibit D**. It is KCC's understanding that all five objectors have withdrawn  
20 their objections and have requested, and been permitted to, exclude  
21 themselves from the Class. Additionally, there were no objections from any  
22 Attorney General. The deadline to submit a Request for Exclusion or Object  
23 was February 9, 2015.


24 15.The Net Settlement Fund available to pay Class Members is approximately  
25 \$3,501,081.52, which was determined by subtracting the following from the  
26 \$8,475,000 Settlement Amount: a Class Representative Incentive Award  
27 (\$1,500), Class Counsels' requested fees (\$2,118,750), Class Counsel's  
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1 expenses (\$25,000) and the total Settlement Administration costs  
2 (\$2,828,668.48).

3 16.KCC will mail a Settlement Check to Class Members who made a valid  
4 claim. Based on the available Net Settlement Fund (\$3,501,081.52) and the  
5 307,914 currently valid claims (which includes accepted late claims), it is  
6 estimated each claimant will receive a check for \$11.37. Because there is  
7 still additional final review being performed on later received claims, this  
8 figure is subject to possible minimal change (KCC estimates the maximum  
9 variance in the check value would be less than 1% of the anticipated check  
10 value above).

11 17.KCC will incur a total of \$2,828,668.48 in costs, associated with the  
12 administration of this Settlement. This will include all costs incurred to  
13 date, as well as estimated costs involved in completing the settlement  
14 administration. A true and correct copy of the costs associated with the  
15 claims administration for this matter, is attached hereto as **Exhibit E**.

16 I declare under penalty of perjury that the foregoing is true and correct.  
17 Executed on March 19, 2015 pursuant to the laws of the United States of America  
18 and the State of California.

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Patrick M. Passarella